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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2397 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

MALI SANGARIBEN WD/O VIRAJI

Versus

DEPUTY COLLECTOR & ORS.

Appearance:

Kum. K.M. Shah, Advocate, for the Petitioner
Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/04/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at
Palanpur (respondent No. 1 herein) on 5th December 1984

as affirmed in appeal by the order passed by the Collector of Banaskantha at Palanpur on 18th February 1985 as further affirmed in revision by the order passed by and on behalf of the State Government (respondent No. 3 herein) on 19th November 1985 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 1 cancelled the entry in revenue record bearing No. 687 made on 12th September 1980 with respect to Survey No. 120(part) admeasuring 2 acres 22 gunthas situated in village Rajpur taluka Deesa (the disputed land for convenience) in favour of the petitioner herein.

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to respondent No. 4 herein. It was agricultural land. He appears to have sold it to the petitioner by a registered sale deed executed on 15th July 1980. Pursuant thereto the necessary entry was effected in the record of rights on 12th September 1980 and it was certified on 13th October 1980. A copy of Entry No. 687 in the record of rights with respect to the disputed land is at Annexure C to this petition. It appears to have come to the notice of respondent No. 1. He appears to have found it not according to law. He thereupon issued one show cause notice on 26th March 1984 presumably under sec. 108(6) of the Gujarat Land Revenue Rules, 1972 (the Rules for convenience) framed under the relevant provisions contained in the Bombay Land Revenue Code, 1879 (the Code for brief) calling upon the petitioner to show cause why the aforesaid entry at Annexure C to this petition should not be cancelled. After hearing the petitioner, by his order passed on 5th December 1984, respondent No. 1 cancelled the aforesaid entry. Its copy is at Annexure D to this petition. That aggrieved the present petitioner. She carried the matter in revision under Rule 108(6) of the Rules before respondent No. 2. By his order passed on 18th February 1985 in the aforesaid revisional proceeding, respondent No. 2 rejected it. Its copy is at Annexure E to this petition. The aggrieved petitioner carried the matter in further revision under sec. 108(6A) of the Rules before Respondent No. 3. By the order passed by and on behalf of respondent No. 3 on 19th November 1985 in the aforesaid revisional proceeding, respondent No. 3 rejected it. Its copy is at Annexure F to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition as affirmed in revision by the order at Annexure E to this petition as affirmed in further

revision by the order at Annexure F to this petition.

3. It clearly transpires from the entry at Annexure C to this petition that it was effected on 12th September 1980 and it was certified on 13th October 1980. It was sought to be revised nearly 3 1/2 years thereafter by issue of the show-cause notice on 26th March 1984 as transpiring from the impugned order at Annexure D to this petition. According to learned Advocate Kum. Shah for the petitioner, this cannot be done in view of the binding ruling of the Supreme Court in the case of State of Gujarat v. Patel Raghav Natha and others reported in (1969) 10 G.L.R. 992.

4. It cannot be gainsaid that in the aforesaid binding ruling of the Supreme Court, it has been held that revisional powers under sec. 211 of the Code for correction of a mutation entry cannot be exercised beyond the reasonable period of 3 months. Powers under sec. 108(6) of the Rules are similar to those under sec. 211 of the Code. What applies to sec. 211 of the Code would apply with equal force to the provisions contained in Rule 108(6) of the Rules qua revision of a mutation entry. In that view of the matter, a mutation entry made in the revenue record cannot and need not be upset in exercise of the revisional powers under Rule 108(6) of the Rules after expiry of three months from the date of certification of such entry.

5. As pointed out hereinabove, the entry was made on 12th September 1980 and it was certified on 13th October 1980. It was sought to be revised by issue of the show-cause notice of 26th March 1984 nearly 3 1/2 years after the entry was certified. This is not permissible in view of the aforesaid binding ruling of the Supreme Court in the case of Patel Raghav Natha (supra).

6. It is difficult to accept the submission urged before me by learned Assistant Government Pleader Shri Sompura for respondents Nos. 1 to 3 to the effect that, if a transaction is found contrary to rules, it would be open to the revenue authorities to cancel an entry in the revenue record. It may be noted that revenue authorities are invested with limited powers of adjudication. If it is a question of certification of a mutation entry in the revenue record, the adjudication powers of appeal and revision would be with respect to the correctness of mutation of such entries. If any challenge to the transaction on the basis of which such mutation entry is made before the revenue authorities in what is popularly known as R.T.S. proceedings, it would be desirable to

refer such challenge to appropriate authorities under appropriate enactments. For instance, if a transaction is sought to be challenged as violative of sec. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief), the matter may be referred to the authorities named in the Tenancy Act in that regard. It would not be open to the revenue authorities in R.T.S. proceedings to undertake the task of deciding the validity of such transaction on the touchstone of sec. 63 of the Tenancy Act. If that is done, the concerned revenue authority can be said to have exceeded his jurisdiction in that regard. Once a matter is referred to the Competent Authority under the Tenancy Act, he will decide it according to law in the light of the relevant provisions contained therein and would take appropriate actions as permissible thereunder. The authors of impugned orders at Annexures D, E and F to this petition have remained oblivious to this aspect of the matter and they deserve to be set aside also on this ground as they have decided the validity of the transaction on the basis of which the aforesaid entry at Annexure C to this petition has been made in the revenue record.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this petition as affirmed in revision by the order at Annexure E to this petition as affirmed in further revision by the order at Annexure F to this petition cannot be sustained in law. It has to be quashed and set aside.

8. In the result, this petition is accepted. The order passed by the Deputy Collector at Palanpur on 5th December 1984 at Annexure D to this petition as affirmed in revision by the order passed by the Collector of Banaskantha at Palanpur on 18th February 1985 at Annexure E to this petition as further affirmed in revision by the order passed by and on behalf of the State Government on 19th November 1985 at Annexure F to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
